APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/497,836	02/03/2000	Victor S. Moore	BC9-99-044	7966

			EXAMINER
23334 7590 03/22/2005			FLYNN, KIMBERLY D

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ART UNIT	PAPER NUMBER
2153	

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/497,836	Applicant(s) MOORE ET AL.
	Examiner Kimberly D Flynn	Art Unit 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _04 October 2004_.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-18_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-18_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   This Action is in response to an amendment filed October 4, 2004. Claims 1-18 are

presented for further consideration.

Claim Rejections - 35 USC § 112

2.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making
> and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it
> pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode
> contemplated by the inventor of carrying out his invention.

3.   Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with

the written description requirement. The claim(s) contains subject matter, which was not

described in the specification in such a way as to reasonably convey to one skilled in the relevant

art that the inventor(s), at the time the application was filed, had possession of the claimed

invention.

In considering claims 1-18, the independent claims 1, 5-6, 10-11, and 15, includes

limitations that were not described in the specification at the time the application was filed. In

particular the independent claims each recite *"inter alia"*, "the indicated speed or the input speed

being less than the data rate of the data link and less than the data rate capacity of the requesting

computer". Applicant refers to the specification page 9, lines 7-10, which states that "the speed

at which the data is sent from the client is governed by the client". This does not describe, nor

does it provide support for the indicated speed being less than the data rate of the data link and

less than the data rate capacity of the requesting computer. There is no mention of a comparison

of the indicated speed versus the data link or the requesting computer, in fact the indicated speed

can be any speed input by the user. Although, the specification states that the speed at which the

data is sent is governed by the client (input or indicated speed), there is no description or support

for the "indicated speed being less than the data rate of the data link and less than the data rate

capacity of the requesting computer". Therefore; the entire limitation is considered new matter

and must either be cancelled or appropriately corrected.

Dependent claims 1-2, 5-7, and 11-12, each recite, "*inter alia*", "average rate of

transmission" or "average transmission rate", which was not described in the specification in

such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the

time the application was filed, had possession of the claimed invention. Applicant points out

page 9, lines 7-11 of the specification, which states "the first and second interval should not be

so short that they are comparable to the overhead time involved in sending the pause and

continue signals and carrying out the pause and continue instructions. The total cycle time is

preferably at least 1 second". The aforementioned section of the specification does not any way

describe or even mention an average rate of transmission, in fact the specification does not even

mention the term "average". A "total cycle time" is not an average rate of transmission. An

"average" is defined as the sum of all items divided by the number of items. The specification

mentions a "first and second interval" and a "total cycle time", however it does not disclose or

support an average of the intervals or the cycle times.

Therefore, because the claims include new matter that was not described in the

specification at the time the application was filed, these claims must be cancelled or

appropriately corrected.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

5.   Claims 1, 3-4, 11, 13-14, 16, and 18 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Welles, II et al. (U.S. Patent No 6,532,495) in view of Yao et al. (U.S. Patent

No. 5,938,734).

In considering claims 1, 6, and 11, Welles discloses a method for transmitting data from a

server to a requesting computer, the method comprising the steps of:

receiving a request for a specified data item at the server(col. 6, lines 60-65), the

specified data item to be delivered in its entirety prior to being accessed (well known feature of

FTP file transfers, wherein the applicant discloses that the request can be a FTP request)

receiving a speed indication signal at the server from the requesting computer wherein

the speed indication signal comprises an indicated speed of transmission (col. 7, lines 5-16); and

While the system taught by Welles discloses the invention substantially as claimed it

does not disclose the step of limiting an average rate of transmission of at least a portion of the

data item across a data link to the requesting computer to be not greater than the indicated speed.

However, this is merely the well known leaky bucket or Generic cell rate algorithm which is a

data packet policing policy used to guarantee that the traffic matches the negotiated connection

that has been established between the user and the network. The variables of the GCRA include

(L=limit and I= interval), wherein the sum of the intervals match the limit.

Yao whose invention is a real time stream server for handling a plurality of real time

stream data with different data rates discloses that when the maximum data rate is received

(input or dedicated speed) a number of unit streams or blocks are determined or based on this

maximum rate (col. 5, lines 66-67 through col. 6, lines 1-5). Yao further discloses that the

scheduling unit carries out scheduling including the selection of the transfer start timings for the

unit streams (blocks) wherein each one of the unit streams (blocks) are scheduled as an

independent unit stream for which the block transfer time for one block is scheduled according to

the block transfer period, the block size, the time-slot interval, and the block transfer time.

Accordingly the real time data stream is read out with a data rate not greater than the maximum

rate based on the schedule (col. 7, lines 33-67 through col. 8, lines 1-5).

Therefore, it would have been obvious to one skilled in the art to incorporate and

implement the aforementioned steps of dividing or limiting the stream resources into amounts

corresponding to the unit streams and allocate according to a data rate of each real time stream so

that it becomes possible to utilize the stream resources efficiently without wasting resources.

In considering claims 2, 7, and 12, the combined system of Welles and Yao discloses the

limiting step comprising the sub steps of:

determining a block size based at least on the average transmission rate; determining a period

based at least on the average transmission rate (see Yao col. 12, lines 18-25); and

transmitting a plurality of blocks of data, each of the blocks having a block size and being

transmitted at intervals substantially equal to the time period (see Yao col. 12, lines 37-42);

In considering claims 3 and 13, the combined system of Welles and Yao discloses a

method further comprising the steps of:

accessing a remote computer indicated in an address included in the request, wherein the

remote computer is not one of the server and the requesting computer. and receiving the first data

from the remote computer (see Welles, col. 6, lines 56-65, see also figs. 3A(subscriber system),

3B(ISP system), and 3C (Broadcast channel provider system))

In considering claims 4 and 14, the combined system of Welles and Yao discloses a

method further comprising the steps of reading the data item from a memory associated with the

server (see, Welles, fig. 3B, (Memory (127), includes download filed (101)).

In considering claim 8, the combined system of Welles and Yao further discloses a

method further comprising the steps of:

accessing a remote computer indicated in an address included in the request, wherein the

remote computer is not one of the server and the requesting computer; and receiving the first data

from the remote computer (see Welles, col. 6, lines 56-65, see also figs. 3A(subscriber system),

3B(ISP system), and 3C (Broadcast channel provider system))

In considering claim 9, the combined system of Welles and Yao further discloses a

method further comprising the steps of reading the data item from a memory associated with the

server (see, Welles, fig. 3B, (Memory (127), includes download filed (101)).

In considering claims 16-18, Ravi further discloses wherein the transmission rate is not

related to a speed that is associated with the specified data item (see Yao col. 5, lines 37-45).

6.   Claims 5, 10, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Welles in view of Huizer et al. (U.S. Patent No. 6,751,802; hereinafter Huizer).

In considering claims 5, 10, and 15, Gupta discloses a method for transmitting data from a server to a requesting computer, the method comprising the steps of: accepting a user request for a specified data item at a client computer (col. 6, lines 60-65), the specified data item to be delivered in its entirety prior to being accessed (well known feature of FTP file transfers, wherein the applicant discloses that the request can be a FTP request)

accepting a user input speed setting at the client computer (col. 7, lines 5-16); and

While the system taught by Welles discloses the invention substantially as claimed it does not disclose the step of limiting an average rate of transmission of at least a portion of the data item across a data link to the requesting computer to be not greater than the indicated speed. However, this is merely the well known leaky bucket or Generic cell rate algorithm which is a data packet policing policy used to guarantee that the traffic matches the negotiated connection that has been established between the user and the network. The variables of the GCRA include (L=limit and I= interval), wherein the sum of the intervals match the limit.

Yao whose invention is a real time stream server for handling a plurality of real time stream data with different data rates discloses that when the maximum data rate is received (input or dedicated speed) a number of unit streams or blocks are determined or based on this maximum rate (col. 5, lines 66-67 through col. 6, lines 1-5). Yao further discloses that the scheduling unit carries out scheduling including the selection of the transfer start timings for the unit streams (blocks) wherein each one of the unit streams (blocks) are scheduled as an independent unit stream for which the block transfer time for one block is scheduled according to the block transfer period, the block size, the time-slot interval, and the block transfer time.

Accordingly the real time data stream is read out with a data rate not greater than the maximum

rate based on the schedule (col. 7, lines 33-67 through col. 8, lines 1-5).

transmitting the user request for a data item to a server computer (col. 7, lines 40-46);

While Welles discloses the system substantially as claimed, Welles does not disclose

sending a sequence of pause transmission and resume transmission signals from the client

computer to a server computer according to the schedule. Nonetheless, receiving a sequence of

playback functions such as "pause" and "resume" to stop and continue a stream is well known

as evidenced by Huizer. In similar art, Huizer discloses that allows a user to pause and resume

playback of a video stream (col. 2, lines 48-50). It would have been obvious to modify the

system disclosed by Welles to include a sequence of playback functions such as "pause" and

"resume" to stop and continue a stream in order to give the user Video-on-Demand control of

the stream. Therefore, the aforementioned limitations would have been an obvious modification.

Response to Arguments

7.   Applicant's arguments filed October 4, 2004 have been fully considered but they are

moot in view of the new grounds of rejection.

Conclusion

8.   Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Kimberly D Flynn whose telephone number is 703-308-7609.

The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Glen Burgess can be reached on 703-305-4792. The fax phone numbers for the

organization where this application or proceeding is assigned are as follows:
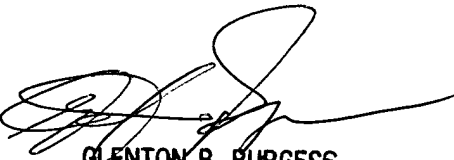
(703-746-72388, for After Final communications

(703) 746-7239, for Official communications

(703) 746-7240, for Non-Official/Drafts.

Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is (703-305-3900.

Kimberly D Flynn
Examiner
Art Unit 2153

KF
March 10, 2005

GLENTON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100